

# Navigating the intersection of IPR and OS

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# CONTENT OUTLINE

- Prior notice
- Intellectual property
- Science
- Conclusion

# PRIOR NOTICE

All following content is included in the report "Open Science and Intellectual Property Rights. How can they better interact" co-authored by Eva Méndez and me.

<https://openscience-ipr.eu/intellectual-property/>

# INTELLECTUAL PROPERTY

Excerpt from [Section 4](#) of the Report.

There is a traditional discussion about the legal nature of the rights regulated by intellectual property norms due to the intangible condition of the objects ruled under this legislation.

## Notorious fact

The law considers that information that accomplishes certain characteristics is subject to what has been traditionally understood as 'protection' and enforces a proceeding to cease any activity held over the said information and to indemnify its rightholder.

What is relevant is the existence of a legal regulation whose object is information.

In order to exercise certain activities over such information, the consent of the rightsholder is needed, with the sole exceptions included in the law, if any, and no others.

Therefore a general rule is applicable:  
if there is no consent from the rightholder or there is  
no legal provision, nobody may exercise certain  
activities defined in the law over certain information;  
hence a monopoly is created.



Intellectual property legislation creates a sphere where all activities over an item are forbidden by default unless one or more of these conditions are met.

## Condition to legally use an intellectual property asset:

1. Either having consent from the rightholder;
2. Either there is a specific legal permission (a limitation of copyright, a suspension of a patent) which is always interpreted restrictively;
3. Either the rights expired due to the passage of time.

This context of **forbidden by default** is a legal burden to the free transmission of information.

The expression '**all rights reserved**' is applicable even when nothing is stated.

The term Intellectual Property is wide and heterogeneous.

The term Intellectual Property comprises four major and **very different** fields:

- Copyright.
- Patents.
- Trade marks.
- Trade secrets.

- Copyright applies to original works of authorship as soon as they are fixed in any tangible medium of expression.
- Patents applies to an invention of a process or a product.

- Trademarks refer to a symbol used in commerce to identify the original producer of goods or services so as to distinguish them from other products in the market.
- Trade secrets consist of information that is valuable because it is not generally known.



## Not all IPR affect Open Science:

IPR	Affects	Example
Copyright	Yes	Publications. Code
Patents	Yes	Inventions
Trademarks	No	Logos, jingles
Trade secrets	Yes	Coca Cola formula

Although most literature only mentions these four categories as the intellectual Property components, other rights have been included under this term:

- Designs.
- Plant varieties.

- Domain names.
- Geographic marks.
- Personality rights.

- Industrial designs.
- Integrated circuits.
- Fashion.

- Traditional knowledge.
- Confidentiality.
- Computer technology.

According to some authors, this concept should only include 'rights that are related to some kind of effort or achievement and not to a person's personality or personal characteristics'.

## Conclusions:

- IPR is a very wide term.
- Under IPR we include very different rights.
- Not all rights affect knowledge transmission.

# SCIENCE



# ROBERT K. MERTON'S CUDOS

CUDOS Science characteristics according to Robert K. Merton:

- Communism.
- Universalism.
- Disinterestedness.
- Organised scepticism.

'Communism' notes that the findings of science are 'a commons', a product of social and collective collaboration assigned to the community, and that individual researchers eschew their IPR in favour of recognition and esteem for their ideas, and secrecy is the opposite of this norm (see [Section 6](#) of the Report).

'Universalism' holds that scientific validity should not be evaluated or influenced by socio-political or personal status of its participants (race, gender, politics or class).

'Disinterestedness' focuses on the role scientific institutions play in ensuring robust research: involving as it does the verifiability of results, scientific research is under the exacting scrutiny of fellow experts.

'Organised Scepticism' is both a methodological and institutional mandate which holds that the scientific community should robustly scrutinise ideas and be mindful that discoveries may cause controversy both in methodology and codes of conduct of other institutions.

# KARL POPPER'S FALSIFIABILITY

"Theories are, therefore, never empirically verifiable [...] But I shall certainly admit a system as empirical or scientific only if it is capable of being tested by experience."

"These considerations suggest that not the verifiability but the falsifiability of a system is to be taken as a criterion of demarcation."

"In other words: I shall not require of a scientific system that it shall be capable of being singled out, once and for all, in a positive sense; but I shall require that its logical form shall be such that it can be singled out, by means of empirical tests."



"In a negative sense: it must be possible for an empirical scientific system to be refuted by experience."

# IPR AND SCIENCE

- A restrictive IP is more suited for a commercialize a static work.
- Science is not a static work but a process.
- If Science is not open, it is not Science (Eva Méndez dixit).

- In order to create, scientific activity needs:
  - To check the permissions of the works we use to build upon them.
  - To give rights to the next researcher in the queue.

- In order to accomplish CUDOS, scientific activity needs:
  - To share the works we use to build upon them.
  - To guarantee the next researcher will be able to share our contributions.

- In order to accomplish falsifiability, scientific activity needs:
  - To reproduce prior investigations checking its falsifiability.
  - To guarantee our research can be subject to falsifiability.

# CONCLUSIONS

Science needs a research space where copying, modifying, distributing and public communication produces the less friction as possible.

Current IP laws are more tailored for entertainment industry than for Science.



In the old tension between *panem et circenses*, circenses has won again.